

*United States Court of Appeals
for the Second Circuit*



APPENDIX

76-1325

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

-----x
UNITED STATES OF AMERICA,

Plaintiff-Appellee,

-against

EDWIN ALMESTICA,

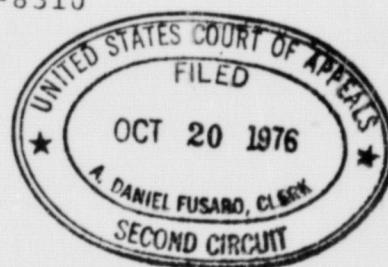
Defendant-Appellant.

-----x
Docket No. 76-1325
: *B P/S*

APPENDIX FOR APPELLANT

ON APPEAL FROM A JUDGMENT
OF THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NEW YORK

PETER LUSHING
Attorney for Appellant
60 East 42nd Street
New York, New York 10017
986-8310



10/20

PAGINATION AS IN ORIGINAL COPY

TABLE OF CONTENTS

Docket entries	1
Indictment	3
Guilty plea hearing (April 8, 1976 transcript)	5
Sentence hearing (June 21, 1976 transcript)	24

APPEAL

DET - U.S. District Court

U.S. MAGISTRATE Assigned

U.S. vs X

Disp/Sentence

FELONY Fel

207

District Office

1

76 CR 198EDWIN ALMESTICA
(LAST FIRST MIDDLE)

Case Filed

Mo. Day

B 17

PLATT, J.

2

76

198

Docket No. 11

U.S. TITLE SECTION
18-2113(a) & 2
" 2113(d)

OFFENSES CHARGED

Bank robbery
and use of dangerous weapon

ORIGINAL COUNTS

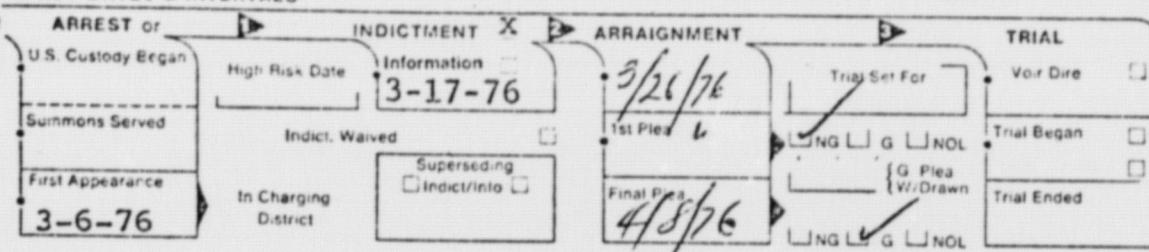
2

U.S. MAG CASE NO **76 M 469**

BAIL • RELEASE

 AMT Fugitive Set Pers. Recog \$ 25,000 PSA conditions 10% Deposit Surety Bond Collateral Bail Not Made Status Changed (See Docket) 3rd Ptv Cust Other Disposition of Charges On All Charges On Lesser * Offenses Convicted Acquitted Dismissed WOP. WP On Government's Motion

II. KEY DATES & INTERVALS

 SENTENCE Disposition of Charges Convicted Acquitted Dismissed WOP. WP On Government's Motion

		MAGISTRATE			
SEARCH WARRANT	ISSUED	DATE	INITIAL/NO.	INITIAL APPEARANCE DATE	OUTCOME
SEARCH WARRANT	ISSUED	3-4-76	MS/070B	3-6-76	<input type="checkbox"/> DISMISSED
SEARCH WARRANT	RETURN	3-4-76	MS/070B	3-17-76	<input checked="" type="checkbox"/> HELD FOR GJ OR OTHER PROCEEDING IN THIS DISTRICT
SEARCH WARRANT	ISSUED	3-4-76	MS/070B	3-17-76	<input type="checkbox"/> HELD FOR GJ OR OTHER PROCEEDING IN DISTRICT BELOW
SEARCH WARRANT	SERIALIZED				
ARREST WARRANT ISSUED					
COMPLAINT	►				
OFFENSE (In Complaint)					
Armed Bank Robbery. T-18 USC Sections 2113(a) and 2113(d).					

U.S. Attorney or Asst.

ATTORNEYS

Defender CJA Ret Waived Self None / Other PD CD

J.O'Brien.

E.Kelly, Esq.

* Show last names and suffix numbers of other defendants on same indictment/information.

DATE	DOCUMENT NO.	PROCEEDINGS	EXCLUDABLE DELAY
3-4-76		Arrest Warrant Issued.	(a) <input type="checkbox"/> (b) <input type="checkbox"/> (c) <input type="checkbox"/> (d) <input type="checkbox"/>
3-6-76		Deft. arraigned before Magistrate Schiffman.	
3/17/76		Deft. indicted - See 76 CR 198 (Before Mishler, Ch j)	
3-26-76		Before PLATT, J - case called - deft & counsel present - deft arraigned and after being advised of his rights and on his own behalf enters a plea of not guilty - bail contd - adjd to 4-8-76 at 9:30 am for status report.	
4-8-76		Before PLATT, J - case called - defts & attys present - deft arraigned & after being advised of his rights withdraws plea of not guilty and enters a plea of guilty to count 1 - sentence adjd without date.	
4-19-76		Stenographers transcript filed dated 4-8-76	
6-21-76		Before PLATT, J - case called - deft & counsel E.Kelly present - The court has considered sentencing under the Y.C.A. and finds that it is inappropriate in this case, therefore, the deft is sentenced to imprisonment for 18 months subject to T-18, U.S.C.Sec. 4205(b)(2) on count 1. On motion of AUSA Marks count 2 is ordered dismissed.	
6-21-76		Judgment and commitment filed - certified copies to Marshal	

Sept 23 '76
Ans. of Dr. T. H. H.
T. H. H. T. H. H.

FINE AND RESTITUTION PAYMENTS

DATE	RECEIPT NUMBER	CD NUMBER	DATE	RECEIPT NUMBER	CD NUMBER

TRP:JMM:sr
F.# 761310

3
FILED
U.S. DISTRICT COURT E.D. N.Y.
MAR 17 1976

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

TIME A.M.
P.M.

----- X
UNITED STATES OF AMERICA

INDICTMENT

- against -
EDWIN ALMESTICA and
ISIDRO ALVAREZ,

Cr. No.
(Title 18, U.S.C., §2113(a)
and §2)

Defendants.

----- X
THE GRAND JURY CHARGES:

76 CR 198

COUNT ONE

On or about the 3rd day of March 1976, within the Eastern District of New York, the defendants EDWIN ALMESTICA and ISIDRO ALVAREZ knowingly and wilfully, by force, violence, and intimidation, did take from the person and presence of employees of the Chase Manhattan Bank, 1104 Rutland Road, Brooklyn, New York, approximately One Thousand Six Hundred Twenty-Six Dollars (\$1,626.00), in United States currency, which money was in the care, custody, control, management and possession of the said Chase Manhattan Bank, the deposits of which bank were then and there insured by the Federal Deposit Insurance Corporation. (Title 18, United States Code, §2113(a) and §2).

COUNT TWO

On or about the 3rd day of March 1976, within the Eastern District of New York, the defendants EDWIN ALMESTICA and ISIDRO ALVAREZ knowingly and wilfully, by force, violence, and intimidation, did take from the person and presence of employees of the Chase Manhattan Bank, 1104 Rutland Road, Brooklyn, New York, approximately One Thousand Six Hundred Twenty-Six Dollars (\$1,626.00), in United States currency, which money was in the care, custody, control, management and possession of the said bank the deposits of which bank

were then and there insured by the Federal Deposit Insurance Corporation and in commission of this act and offense the defendants EDWIN ALMESTICA and ISIDRO ALVAREZ did assault and place in jeopardy the lives of the said bank employees, as well as the lives of other persons present by the use of a dangerous weapon. (Title 18, United States Code, §2113(d) and §2).

A TRUE BILL

Edward Bellmore
DEPUTY FORLMAN

DAVID G. TRAGER
DAVID G. TRAGER
UNITED STATES ATTORNEY
EASTERN DISTRICT OF NEW YORK

1
2 UNITED STATES DISTRICT COURT
3 EASTERN DISTRICT OF NEW YORK

5
FILED
IN CLERK'S OFFICE
U.S. DISTRICT COURT E.D. N.Y.

4 -----
5 UNITED STATES OF AMERICA :
6 against :
7 EDWIN ALMESTICA and :
8 ISIDRO ALVAREZ :
9 Defendants :
10 -----x

APR 19 1976

TIME A.M.
P.M.

76 CR 198

11 United States Courthouse
12 Brooklyn, New York

13 April 8, 1976
14 9:30 a.m.

15 Before:

16 HONORABLE THOMAS C. PLATT,

17 U. S. D. J.

18
19
20 CRIMINAL CAUSE
21 I I FOR PLEADING
22 *Sheldon Silverman*
23 *Sheldon Silverman*
24 U.S. District Court for the
25 Eastern District of N.Y.
SHELDON SILVERMAN
Official Court Reporter

(3)

1
2 Appearances:
34 DAVID G. TRAGER, Esq.
5 United States Attorney for the
6 Eastern District of New York7
8 By: JONATHAN MARKS, Esq.
9 Assistant U.S. Attorney10
11 EDWARD KELLY, Esq.
12 Attorney for Defendant Almestica
13 Legal Aid Society14
15 MELVIN WEISSLER, Esq.
16 Attorney for Defendant Alvarez17
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1 THE CLERK: U.S.A. versus Edwin Almestica and
2 Isidro Alvarez.

3 MR. KELLY: Your Honor, this case was on
4 on April 7th and we indicated at that time that
5 probably it would be a disposition in this case.
6 Both attorneys, myself, and Mr. Weissler for his
7 defendant, and I for Mr. Almestica, have worked
8 out a disposition.

At this time the defendant Edwin Almestica
will withdraw his not guilty plea previously
entered and now offers to plead guilty to Count 1
of the indictment.

17 If you start to say something at any time,
18 you may stop.

19 Anything you say may be used against you,
20 either today or at some subsequent proceeding.

21 If you wish to consult with your attorney,
22 you may at any time.

23 Your attorney has just advised that you wish
24 to change your plea to Count 1 from not guilty to
25 guilty.

1 Before accepting the plea of guilty I have
2 to ask you certain questions.

3 Is your full name Edwin Almestica?

4 DEFENDANT ALMESTICA: Yes, sir.

5 THE COURT: Have you been advised and do you
6 understand if you want to go to trial you have a
7 right to a speedy and public trial by jury with the
8 assistance of counsel?

9 DEFENDANT ALMESTICA: Yes, sir.

10 THE COURT: On this indictment.

11 DEFENDANT ALMESTICA: Yes, sir.

12 THE COURT: You have a right to compulsory
13 process, or subpoenas to obtain witnesses in your
14 behalf?

15 DEFENDANT ALMESTICA: Yes, sir.

16 THE COURT: You have the right to be confronted
17 by witnesses against you at any such trial?

18 DEFENDANT ALMESTICA: Yes, sir.

19 THE COURT: Do you understand you have the
20 right to plead not guilty or persist in your plea
21 of not guilty to Count 1 of the indictment?

22 DEFENDANT ALMESTICA: Yes, sir.

23 THE COURT: Do you understand if you went to
24 trial the Government would have the obligation of
25 proving your guilt beyond a reasonable doubt?

1 DEFENDANT ALMESTICA: Yes, sir.

2 THE COURT: If they failed to do so, a jury
3 would have the duty to acquit you?

4 DEFENDANT ALMESTICA: Yes.

5 THE COURT: Do you understand if your plea is
6 accepted you're waiving your constitutional right,
7 right to jury trial?

8 DEFENDANT ALMESTICA: Yes, sir.

9 THE COURT: Do you understand you have the
10 assistance of counsel at the time any sentence
11 is imposed if your plea is accepted?

12 DEFENDANT ALMSTICA: Yes, sir.

13 THE COURT: Do you understand what you're
14 charged with having done in Count 1?

15 DEFENDANT ALMESTICA: Yes, sir.

16 THE COURT: Namely, that on or about March
17 3rd, 1976, you and Mr. Alvarez knowingly and will-
18 fully, by force, violence, intimidation, did take
19 from the person and presence of employees of the
20 Chase Manhattan Bank, 1104 Rutland Road, Brooklyn,
21 New York, approximately \$1,626 in United States
22 currency, which money was in the possession of said
23 bank, the deposits of which bank were then and there
24 insured by the FDIC?

25 DEFENDANT ALMESTICA: Yes, sir.

1 THE COURT: Did you actually do what you're
2 charged with?

3 DEFENDANT ALMESTICA: Yes, sir.

4 THE COURT: Did you do it knowingly and
5 willfully?

6 DEFENDANT ALMESTICA: Yes, sir.

7 THE COURT: Tell me what you did.

8 DEFENDANT ALMESTICA: Well, sir, me, myself
9 and my brother, Isidor Alvarez, at the time of
10 March 3rd, 1976, entered Chase Manhattan Bank, and
11 myself, I approached the guard. My brother
12 approached the manager, and we went through executing
13 this terrible crime that we did commit. I understand
14 what I did. I was aware of what I was doing.

15 THE COURT: Did you steal the money itself?

16 DEFENDANT ALMESTICA: Excuse me, sir?

17 THE COURT: Did you steal the money?

18 DEFENDANT ALMESTICA: Can you phrase that
19 in a different way, sir?

20 THE COURT: Did you take the money from the
21 bank?

22 DEFENDANT ALMESTICA: Yes, sir.

23 THE COURT: Did you take it by force,
24 violence and intimidation?

25 DEFENDANT ALMESTICA: Yes, sir.

1 THE COURT: You did it knowingly and will-
2 fully? I take it you knew what you were doing.
3 You did it willfully?

DEFENDANT ALMESTICA: I can't say I did it
willingly, sir. At the time I was using drugs and
the main reason why I entered this bank the way I
did because I was under the influence of drugs and
I needed some money to support my habit, sir.

9 THE COURT: Do you understand the fact that
10 you needed money to support your habit is not a
11 defense?

12 DEFENDANT ALMESTICA: I understand, sir.

13 THE COURT: You knew what you were doing.
14 You just finished telling me that.

15 DEFENDANT ALMESTICA: Yes, sir.

16 THE COURT: You did it willfully in the
17 sense that you wanted to take the money, you knew
18 you wanted to take the money?

19 DEFENDANT ALMESTICA: Yes, sir.

20 THE COURT: As you say, you knew what you
21 were doing during the time -- you knew what you
22 were doing?

23 DEFENDANT ALMESTICA: Yes, sir.

24 THE COURT: Have any promises of any kind,
25 including any promise or suggestion as to what

1 sentence will be imposed been made to you by
2 anyone in the United States Attorney's office?

3 DEFENDANT ALMESTICA: No, sir.

4 THE COURT: By your lawyer?

5 DEFENDANT ALMESTICA: No, sir.

6 THE COURT: By the Court or anyone else
7 to induce a plea of guilty from you?

8 DEFENDANT ALMESTICA: No, sir.

9 MR. KELLY: Judge, if we may interject here.

10 I think the usual agreement is in effect
11 here that the other count in the indictment will be
12 dismissed. I think Mr. Marks is going to make a
13 statement to the Court with respect to the other
14 parts of the package, so to speak, here.

15 MR. MARKS: Your Honor, the Government has
16 entered into an agreement with Mr. Almestica as well
17 as with Mr. Alvarez. I would like to put both on
18 the record at this time.

19 THE COURT: Both of you listen to this.

20 MR. MARKS: The plea of guilty by Mr. Almes-
21 tica and Mr. Alvarez to Count 1 of the indictment
22 is accepted in satisfaction of all charges and
23 potential charges arising out of the March 3rd bank
24 robbery and another bank robbery committed on October
25 31, 1975, at the same bank.

In return for accepting a plea of guilty

1 to Count 1 by Mr. Almestica and Mr. Alvarez, those
2 two defendants have agreed to cooperate fully with
3 the Government and to make a full, immediate and
4 truthful disclosure of all information in their
5 possession concerning other bank robberies of which
6 they have knowledge and in which they participated.

7 The Government agrees that nothing they say
8 in the course of their cooperation will be used
9 against them in any criminal prosecution; however,
10 the Government has advised the defendants through
11 their attorneys that in the event they make any
12 material false statements in the course of their
13 cooperation, they are subject to prosecution for
14 perjury.

15 That's the full extent of the Government's
16 agreement with these two defendants.

17 THE COURT: Perjury or 1001.

18 MR. MARKS: Either one.

19 THE COURT: You understand that, gentlemen?
20 Specifically, Mr. Almestica, do you understand that?

21 DEFENDANT ALMESTICA: Yes, sir, I do.

22 THE COURT: Is that your understanding as to
23 what agreement you have made with the Government?

24 DEFENDANT ALMESTICA: Yes, sir.

25 THE COURT: What Mr. Kelly said and what

1 Mr. Marks said?

2 DEFENDANT ALMESTICA: Yes, Mr. Kelly explained
3 it to me thoroughly and he explained to me the deal,
4 the agreement in which me and the District Attorney
5 has made in order for my plea of guilty, accepting
6 my plea of guilty. I understand fully what he
7 expects of us.

8 MR. MARKS: I might add, your Honor, the
9 Government has agreed to apprise the Court of the
10 full extent of Mr. Almestica's and Mr. Alvarez's
11 cooperation prior to their sentencing.

12 THE COURT: You understand that also,
13 Mr. Alvarez?

14 DEFENDANT ALVAREZ: Yes, sir.

15 THE COURT: You understand what's been said
16 here, and that's what your understanding of the
17 agreement has been?

18 DEFENDANT ALVAREZ: Yes, sir.

19 THE COURT: You understand that no matter
20 what the District Attorney advises the Court --
21 I'll address this to both of you -- that I'm not
22 bound by anything that they advise me as far as
23 sentencing is concerned? You understand that?

24 DEFENDANT ALVAREZ: Yes.

25 DEFENDANT ALMESTICA: Yes.

1 THE COURT: Has your lawyer, Mr. Almestica,
2 expressed any opinion or made any prediction as to
3 the sentence the Court will impose?

4 DEFENDANT ALMESTICA: No, sir.

5 THE COURT: Have you been threatened or co-
6 erced by anyone into entering a plea of guilty?

7 DEFENDANT ALMESTICA: No, sir.

8 THE COURT: Are you entering the plea of
9 guilty voluntarily and of your own free will because
10 you are guilty and for no other reason?

11 DEFENDANT ALMESTICA: Yes, sir.

12 THE COURT: Have you discussed your plea of
13 guilty fully with your attorney?

14 DEFENDANT ALMESTICA: Yes, sir.

15 THE COURT: Did you personally enter into
16 any discussions with anyone in the U. S. Attorney's
17 office?

18 DEFENDANT ALMESTICA: No, sir.

19 THE COURT: Do you know what the maximum
20 sentence which may be imposed for this offense is?

21 DEFENDANT ALMESTICA: No, sir.

22 THE COURT: It's twenty years, plus a \$5,000
23 fine or both; twenty years, \$5,000 fine, or both.
24 Do you understand that?

25 DEFENDANT ALMESTICA: Yes, sir.

1 THE COURT: How old are you?

2 DEFENDANT ALMESTICA. Eighteen, sir.

3 THE COURT: You're eligible for Youth Cor-
4 rection Act treatment. You should discuss that with
5 the Probation Department. You may be eligible.
6 It depends upon what your background is.

7 Having been advised as to your constitu-
8 tional rights, the nature of the charge against
9 you, and the consequences of your plea, how do you
10 plead to Count 1 of the indictment?

11 DEFENDANT ALMESTICA: Guilty, sir.

12 THE COURT: Beg pardon?

13 DEFENDANT ALMESTICA: Excuse me?

14 THE COURT: How do you plead to Count 1 of
15 the indictment?

16 DEFENDANT ALMESTICA: Guilty.

17 THE COURT: I find there is a factual basis
18 for the plea and accept the plea of guilty to
19 Count 1 of the indictment.

20 MR. KELLY: Thank you, Judge. The bail is
21 \$25,000 surety. I have no application to reduce it.

22 THE COURT: To be continued.

23 Why doesn't he wait here-- Is
24 it your brother, Mr. Alvarez?

25 MR. ALMESTICA: Yes.

1 THE COURT: Wait one moment, momentarily
2 unless there's a question to come up.

3 Mr. Alvarez, have you heard the questions
4 I asked your brother?

5 DEFENDANT ALVAREZ: Yes, sir.

6 THE COURT: Are you half brothers or how
7 come you have different names?

8 DEFENDANT ALVAREZ: Just have different
9 names; our father is different.

10 THE COURT: Have you been advised and do you
11 understand if you want to go to trial you have
12 the right to a speedy and public trial by jury
13 with the assistance of counsel?

14 DEFENDANT ALVAREZ: Yes, sir.

15 THE COURT: You have the right to subpoenas
16 or compulsory process to obtain witnesses in your
17 behalf?

18 DEFENDANT ALVAREZ: Yes, sir.

19 THE COURT: You have the right to be confronted
20 by witnesses against you?

21 DEFENDANT ALVAREZ: Yes, sir.

22 THE COURT: Before I go any further, did you
23 hear the warnings I gave your brother about your
24 right to remain silent?

25 DEFENDANT ALVAREZ: Yes, I did.

1 THE COURT: Not to answer any questions?

2 DEFENDANT ALVAREZ: Yes.

3 THE COURT: Anything you say may be used
4 against you?

5 DEFENDANT ALVAREZ: Yes, sir.

6 THE COURT: And do you know that you have the
7 right to stop at any time and talk to your lawyer
8 or stop for any reason?

9 DEFENDANT ALVAREZ: Yes, I do.

10 THE COURT: You don't have to answer any
11 questions.

12 You have counsel of your own choice here
13 with you?

14 DEFENDANT ALVAREZ: Yes, sir.

15 THE COURT: You understand you have the
16 right to persist in your plea of not guilty to
17 Count 1 of this indictment?

18 DEFENDANT ALVAREZ: Yes, sir.

19 THE COURT: Do you understand if you went to
20 trial the Government would have the obligation to
21 prove your guilt beyond a reasonable doubt?

22 DEFENDANT ALVAREZ: Yes, sir.

23 THE COURT: If they failed to do so a jury
24 would have the duty to acquit you?

25 DEFENDANT ALVAREZ: Yes, sir.

1 THE COURT: Do you understand if your plea
2 is accepted, you're waiving your constitutional
3 rights, the right to a jury trial?

4 DEFENDANT ALVAREZ: Yes, sir.

5 THE COURT: Mr. Weissler, before I go further,
6 I assume from what Mr. Kelly said that this is your
7 client's intention, too.

8 MR. WEISSLER: Yes, sir, we will withdraw our
9 not guilty plea and plead guilty to Count 1.

10 THE COURT: Do you understand, Mr. Alvarez,
11 if your plea is accepted, you're waiving your
12 constitutional rights, the right to a jury trial?

13 DEFENDANT ALVAREZ: Yes, I do.

14 THE COURT: You understand you'll have the
15 assistance of counsel at the time sentence is im-
16 posed if your plea is accepted?

17 DEFENDANT ALVAREZ: Yes, sir.

18 THE COURT: You understand what you're
19 charged with having done in Count 1?

20 DEFENDANT ALVAREZ: Yes, sir.

21 THE COURT: Did you hear when I read it to
22 your brother a moment ago?

23 DEFENDANT ALVAREZ: Yes, sir.

24 THE COURT: Do you want me to read it again?

25 DEFENDANT ALVAREZ: No, I understand.

1 THE COURT: Can you read?

2 DEFENDANT ALVAREZ: Yes, sir.

3 THE COURT: Have you read it?

4 DEFENDANT ALVAREZ: Yes, I have.

5 THE COURT: Did you actually do what you're
6 charged with in Count 1?

7 DEFENDANT ALVAREZ: Yes, sir.

8 THE COURT: Did you do it knowingly and
9 willfully?

10 DEFENDANT ALVAREZ: Yes, sir.

11 THE COURT: Tell me what you did.

12 DEFENDANT ALVAREZ: We went to Chase Man-
13 hattan Bank, 1104 Rutland Road, approximately
14 about 11:30 and we went in there and willfully
15 took \$1,626 from the bank.

16 THE COURT: Have any promises of any kind
17 including any promises or suggestions as to what
18 sentence will be imposed--

19 DEFENDANT ALVAREZ: No, sir.

20 THE COURT: --been made to you by the Assist-
21 ant United States Attorney other than what has been
22 recited here a moment ago, which you said you under-
23 stood?

24 DEFENDANT ALVAREZ: Yes, sir.

25 THE COURT: Any promises been made other

1 than that?

2 DEFENDANT ALVAREZ: No, sir.

3 THE COURT: Has any promise of any kind,
4 including any suggestion as to what sentence will
5 be imposed been made to you by your lawyer, this
6 Court or anyone else to induce a plea of guilty
7 from you?

8 DEFENDANT ALVAREZ: No, sir.

9 THE COURT: Has your lawyer expressed any
10 opinion or made any prediction as to the sentence
11 the Court will impose?

12 DEFENDANT ALVAREZ: No, sir.

13 THE COURT: Have you been threatened or co-
14 erced by anyone into entering a plea of guilty?

15 DEFENDANT ALVAREZ: No, sir.

16 THE COURT: Are you entering the plea of
17 guilty voluntarily of your own free will because
18 you are guilty and for no other reason?

19 DEFENDANT ALVAREZ: Yes, sir.

20 THE COURT: Have you discussed your plea of
21 guilty fully with your attorney?

22 DEFENDANT ALVAREZ: Yes, I have.

23 THE COURT: Did you personally enter into any
24 discussions with Mr. Marks or anyone in the United
25 States Attorney's office?

1 DEFENDANT ALVAREZ: No, sir.

2 THE COURT: Do you know what the maximum
3 sentence which may be imposed for this offense is?

4 DEFENDANT ALVAREZ: Yes, sir.

5 THE COURT: What is it?

6 DEFENDANT ALVAREZ: Twenty years, sir.

7 THE COURT: Plus--

8 DEFENDANT ALVAREZ: \$5,000 fine.

9 THE COURT: How old are you?

10 DEFENDANT ALVAREZ: I'll be twenty-four.

11 THE COURT: You, too, may be eligible for
12 Youth Correction Act treatment. You should discuss
13 the problem with your attorney and Probation.

14 Having been advised as to your constitutional
15 rights, the nature of the charge against you, the
16 consequences of your plea, how do you plead to
17 Count 1 of the indictment, guilty or not guilty?

18 DEFENDANT ALVAREZ: Guilty.

19 THE COURT: I find there is a factual basis
20 for the plea and accept the plea of guilty to Count
21 1 of the indictment. Bail is the same in this case?

22 MR. WEISSLER: Bail is to continue.

23 MR. MARKS: Yes, your Honor, \$25,000 surety.

24 THE COURT: It will probably be about six
25 weeks before we get a presentence report at which

1 point you will be brought back.

2 MR. KELLY: Thank you very much.

3 The Probation Department will come to you
4 because you're the custody.

5 MR. MARKS: We will ask sentencing be put
6 off until these men have fully cooperated, which
7 will probably entail testifying at trial.

8 THE COURT: It will come up in its normal
9 course. At that point you should make your appli-
10 cation.

11 MR. MARKS: Yes, your Honor.

12 MR. WEISSLER: Thank you very much.

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1
2 UNITED STATES DISTRICT COURT
3 EASTERN DISTRICT OF NEW YORK

5 UNITED STATES OF AMERICA,

Plaintiff, :
6

-against- : 76-CR-198

8 EDWIN ALMESTICA,

9 Defendant. :
10

10 x

14 June 21, 1976
9:30 o'clock a.m.

16 | Before:

17 HONORABLE THOMAS C. PLATT,

U.S.D.J

HENRY SHAPIRO
OFFICIAL COURT REPO

I hereby certify that the foregoing notes were taken in the presence of the witness, and that the same is a true and accurate transcript of the conversation.

John C. Shaffer
Official Reporter
U.S. District Court Reporter
Eastern District Court of New York

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2 A p p e a r a n c e s :

3

4

DAVID G. TRAGER
United States Attorney
Eastern District of New York

6

7

BY: JONATHAN MARKS
Assistant United States Attorney

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EDWARD KELLY, ESQ.

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* * *

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1 THE CLERK: Criminal cause for sentencing,
2 United States of America versus Edwin Almestica.

3 THE COURT: Any reason why sentence should not
4 proceed?

5 MR. KELLY: There is no reason why your Honor
6 should not impose sentence.

7 Prior to sentencing, I would like to - -

8 THE COURT: Mr. Almestica, is there any reason why
9 we should not proceed with sentencing?

10 THE DEFENDANT: No, there isn't.

11 MR. KELLY: Judge, prior to sentencing I would like
12 to hand up an album to the court. The probation repre-
13 considers the defendant's work record, his educational
14 record and his service record, and I'd like to hand up to
15 the court a folder which contains a high school equivalency
16 diploma which the defendant received, an honorable
17 discharge certificate from the United States Army and
18 also a number of wage and tax statements -- the so-
19 called W-2 forms for 1965 -- which indicates that the
20 defendant has had some work record.

1 involved. On this particular robbery before your Honor
2 for sentence, the defendant was involved with his half-
3 brother Dsadio Alvarez. As you know from the probation
4 report, the defendant has cooperated in testifying
5 before the grand jury with respect to the other individuals
6 involved in the robberies in which he was involved. I
7 think however there is some problem at this time with
8 respect to the defendant's continued cooperation.

9 MR. MARKS: I would like to be heard at length as
10 to that, your Honor.

11 THE COURT: Wait a minute.

12 MR. KELLY: I think the defendant had originally
13 indicated that he wouldnot only cooperate with the gover-
14 ment, not only testify before the grand jury, but if
15 necessary he would testify at trial against the individuals
16 with respect to whom he testified against in the grand
17 jury. I think the defendant with respect to testifying
18 at trial has now taken a different position and one of
19 the reasons for the sentencing being put on today was in
20 light of that particular situation.

21 THE COURT: Is there any reason for his change of
22 heart?

23 MR. KELLY: I have discussed it with the defendant,
24 your Honor. I think he unfortunately had some contact
25 with the other individuals implicated in his crimes while

1 he was in jail and after discussing the matter with them,
2 he decided that he was not willing to testify against
3 them. I am not aware that there was any pressure put on
4 him by these other individuals not to testify, but his
5 position at this time is that he just does not want to
6 testify against the other individuals at trial and I
7 think one of the reasons this case was put on for
8 sentencing today was to insure the defendant would not
9 have recourse to his Fifth Amendment rights to claim
10 that he couldn't testify because his case had finally
11 not been disposed of.

12 MR. MARKS: There is a D count in the indictment.
13 It was a vicious armed robbery.

14 MR. KELLY: At any rate, if I may be heard with
15 respect to this defendant?

16 I think unfortunately as has been the case, as
17 your Honor is aware of in many other cases, this
18 defendant had a difficult bringing up. He came from a
19 broken home. I don't think he ever knew his father.
20 His mother had three children by three different men and
21 hasn't given him the type of counseling and stability
22 required to enable him to be a person that would remain
23 on an even keel. I don't know if he had any male figure
24 to pattern his life on, if he had a father. I think
25 unfortunately it may very well be his older brother who

1 implicated him in the robbery and who is to come before
2 the court for sentencing - -

3 THE COURT: Is that Mr. Alvarez?

4 MR. KELLY: Yes, Mr. Almestica's half-brother.

5 THE COURT: What is Mr. Alvarez doing, has he also
6 pleaded guilty?

7 MR. KELLY: Yes.

8 I think the probation report reflects that the
9 defendant's mother has had great difficulty in controlling
10 him for the last two or three years and she seems to
11 contribute some of the bad behavior of the defendant to
12 the influence of his older brother.

13 At any rate, your Honor, the defendant had
14 unfortunately become known to the law when he was only
15 fifteen. He had a petty larceny case at that time.
16 His only two convictions have been time served for a
17 sexual assault and an attempted robbery where he received
18 probation in October of 1964. The defendant advises me
19 as a result of that particular charge and also because
20 he did not adjust properly on probation under the
21 supervision of the Supreme Court branch, he had been
22 violated and has been given a sentence of four years on
23 that particular charge for violation of probation.

24 I ask your Honor to consider in mitigation the
25 fact that this defendant is very young. As I say, he

1 has not had a structured home environment within which
2 to grow up. He unfortunately fell into the pattern of
3 many of the cases that we become familiar with -- both
4 of us -- in our experience. He dropped out of school,
5 did not have any marketable skill and became involved in
6 drugs. That apparently is the motivation for the crimes
7 he has been involved in. He is also the father of a
8 child, Nicole Lindsay, by Diane Lindsay, who is a tenth-
9 grade student in high school. Some of the pressures on
10 the defendant were caused by the pregnancy of that young
11 lady and the birth of the child. He wanted money not
12 only for his narcotics addiction, but to take care of
13 his responsibilities with respect to the child and the
14 mother.

15 I'd ask your Honor therefore to take into con-
16 sideration the fact that this defendant -- young
17 defendant -- has not been dealt a very good hand by
18 life, that he has fallen into drug use and has therefore
19 fallen -- apparently attributable to his drug use --
20 into some serious crimes. He did plead guilty to the
21 charge and he cooperated to the extent he felt he could
22 and I ask your Honor to take that into consideration in
23 mitigation of sentence. He is a very young man.
24 Unfortunately as with many others, has become precocious
25 and mature in an unfortunate way before his time. I

1 would ask your Honor to be as compassionate towards
2 this defendant as you can.

3 THE COURT: Do you wish to say anything, Mr.
4 Almestica?

5 THE DEFENDANT: No, sir, I don't.

6 MR. MARKS: Your Honor, there are a number of
7 points that I would like to make.

8 The Court is aware of the particularly vicious
9 nature of the robbery on March 3rd, 1976, to which the
10 defendant has pleaded guilty. I would ask the Court to
11 take a look at a photograph of the defendant while the
12 robbery was in progress. He was carrying a loaded
13 weapon. He was also carrying a loaded weapon when he
14 went into the same bank wearing a mask on October 31st,
15 1975, when he vaulted the counter and took approximately
16 \$8,000 from the tellers. This man has already been
17 shown lenient treatment by the United States Attorney's
18 office to the extent that on the representation that he
19 would fully cooperate, we allowed him to plead guilty to
20 one count in satisfaction of all charges and potential
21 charges arising out of his participation in the two bank
22 robberies that I have mentioned, and in a third bank
23 robbery at the East New York Savings Bank, Kings Highway
24 branch, on February 24th, 1976.

25 Mr. Almestica agreed to cooperate fully with the

1 government and now I am reading from a letter which
2 sets forth the terms of the agreement reached between
3 Mr. Almestica and the Government. Mr. Almestica had
4 agreed to cooperate fully with the Government in
5 connection with our investigation of the October 31st,
6 1975 and February 24th, 1976 bank robberies. Specifically,
7 Mr. Almestica had agreed to testify fully and truth-
8 fully in the grand jury and in a trial if required
9 about his participation and the participation of others
10 in those robberies.

11 Mr. Almestica is well aware of the fact that his
12 testimony at trial is required. He led the government
13 down the garden path and as a result he received this
14 lenient treatment by being allowed to plead guilty to
15 one count of 2113(a). Mr. Almestica is well aware of
16 the vicious nature of the October 31st robbery in which
17 he was a participant. As for his reasons for not wanting
18 to testify, I had an opportunity on Saturday to visit
19 Mr. Almestica at the Metropolitan Correction Center and
20 advise him what I intended to do today in the event he
21 did not cooperate, to call to your Honor's attention the
22 fact that he had failed to cooperate. I said, "You are
23 making a big mistake and this can have serious con-
24 sequences for you. You have reached a crossroads and
25 it is your decision," and he said "I could never hold my

1 head up if I were to testify against Lamont Floyd
2 and Peter Olevio (phonetic)." That's his reason.

3 I have nothing further to say.

4 THE DEFENDANT: May I say something, sir?

5 I did not see any contract whatsoever. Mr. Marks
6 did not present any contract to me of which I have to
7 sign my signature. Mr. Kelly had told me when my case
8 first begun that a contract would be brought in front of
9 me and I were to sign it and therefore I would be sworn
10 in as to my testimony, if it was needed in the trial of
11 Floyd and Olevio. I testified. I tried to help Mr.
12 Marks as much as possible to the best of my abilities.
13 I could not go any further because of the consequences I
14 may face later on in the future. You understand that
15 Mr. Marks, he did not come to MCC, as he says here. He
16 came there with threats and telling me, "Mr. Almestica,
17 I'm going to tell the judge to give you twenty years,
18 because you don't want to help us and you made a promise."

19 I did not make any promises. I said I would help
20 and I helped. I testified in front of the grand jury
21 truthfully, but I wish not to go any further. I did the
22 best I could to help Mr. Marks. He understands that.

23 I explained to him several times. I was called down
24 last week twice, two days in a row, and I explained the
25 situation. I explained how my family was situated and

1 they wasn't able to be moved around like he said he
2 could do. I explained to him everything, but he just
3 didn't understand.

4 MR. MARKS: The government is ready, willing and
5 able to protect Mr. Almestica and his family and in
6 addition I would refer your Honor to the allocution
7 at the time that this man pled guilty, the agreement
8 which had been reduced to writing as set out in the
9 record, and your Honor asked Mr. Almestica if he under-
10 stood that agreement and he said that he did.

11 THE DEFENDANT: But the agreement wasn't down on
12 any paper, not that I know of. It was just in court
13 when we came before the Honorable Thomas C. Platt.

14 MR. KELLY: Your Honor, it is my understanding
15 this was the agreement. I think we took a long time, to
16 be frank, to put this on the record at the time he
17 pledaded.

18 THE COURT: Did Mr. Almestica fully understand it?

19 MR. KELLY: I think Mr. Almestica is giving too
20 much weight as to whether or not he and his attorney
21 signed this agreement. I think the agreement was put on
22 the record at the time the defendant pleaded.

23 THE COURT: You explained the agreement that was
24 made here and set forth in open court in satisfaction of
25 all the other considerations, the ones with which the

1 court would be concerned?

2 MR. KELLY: He understands that, but unfortunately
3 he has had a change of mind and it is his decision which
4 he will have to live with. It is not uncommon for a
5 defendant to testify against other individuals in the
6 grand jury and then find a problem in living with him-
7 self if he has to testify against those people in open
8 court. I think that is the particular difficulty that
9 he finds. He couldn't feel comfortable with himself in
10 testifying against these other individuals and apparently
11 the government's assurance of protection of himself and
12 his family is not cogent enough to make him take a
13 different position in that regard.

14 THE COURT: Mr. Almestica, you don't leave me
15 much of a choice. The court has considered the question
16 of the Youth Correction Act and it feels it is inappropriate
17 in this case, in light of your previous record, and it is
18 the judgment of the court under Count One of the indict-
19 ment that the defendant is hereby committed to the
20 custody of the Attorney General or his duly authorized
21 representative to be imprisoned for a term of eighteen
22 years and that the defendant shall become eligible under
23 18 United States Code Section 4205(b)2 at such time as
24 the Board of Parole may determine.

25 MR. MARKS: At this time the government moves to

1 dismiss Count Two of the Indictment 75-CR-198 as against
2 this defendant, Edwin Almestica.

3 THE COURT: Motion granted.

4 MR. KELLY: Thank you, Judge.

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*Paula
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